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to the defendant not to compromise or settle the suit without his consent, and in which the Court refused to aid the attorney. The Court did notice that feature as distinguishing it from the preceding cases, which were for the recovery of a liquidated amount, but they also put their decision upon the ground that there was no collusion in that case. Where there is collusion, it can make no difference whether the damages claimed are liquidated or not. The power of the Court is not limited to cases where the action is brought for a liquidated sum, but it interposes upon the general principle that it is equitable and right to protect the attorney against a dishonest combination between the parties to deprive him of the fruits of his labor and services. The plaintiff's attorney had a right to go on and enter up judgment for the costs, and the motion of the defendants for an order discontinuing the action was properly denied.

A. R. Lawrence, Jr., of counsel for appellant.

Clegg & Semler for respondent.

In the Supreme Court of Pennsylvania.

PHILIP D. THOMAS vs. G. W. SNYDER.

1. A consignment was to D. B. or his assigns, "he or they paying the freight for the said coal;" to which was added in the margin of the bill of lading—"freight payable to P. D. Thomas." Through the failure of the assigns of D. B. the freight was lost. The consignee stood ready to pay it on delivery, and would have paid it to the master, but for the said order of the owner of the vessel, who was not present to receive the amount on the delivery of the cargo.
2. *Held*, that in an action for the freight by the owner of the ship against the shipper of the cargo, it was not error for the court to instruct the jury that if they found the above facts their verdict would be for the defendant.

Error to District Court of Philadelphia.

The opinion of the Court was delivered by

WOODWARD, J.—The customary clause in bills of lading directing the payment of freight by the consignee or his assigns is, according to the authorities, both English and American, a condition pre-

cedent, intended only for the benefit of the carrier, and if he deliver goods without receiving freight, he may recover it of the consignor if he were owner of the goods or a shipper under a charter party. But the bill of lading in this case has more than that customary clause. The consignment was to David Duncan, New York, or to his assigns, "he or they paying freight for the said coal at the rate of one dollar and ninety cents per ton;" to which was added in the margin of the instrument, "freight payable to P. D. Thomas." These last are very unusual words in bills of lading. They were inserted by the plaintiff's particular direction, and, taken in connection with the customary clause as above quoted, they were meant, undoubtedly, to prevent the payment of freight to the master of the canal boat, and to secure it to himself as the owner of the boat.

Nor does a single one of the numerous cases cited by the learned counsel of plaintiff in error, exhibit a bill of lading with this remarkable feature on its face. Most of them put the shipper's liability for freight after the cargo has been delivered to the consignee, in disregard of the clause "he or they paying," &c., upon the covenants in the charter party, and amount to no more than this—that the master does not lose his right of recourse upon such covenants by failing to get his freight, as directed by the bill of lading, from the consignee. And Lord Tenterden seemed to think, in *Drew vs. Bird*, 1 Moody & Mal. R. 156, that where there was no charter party, there was no such right of recourse, and that the carrier must collect his freight out of the consignee, or lose it. But in *Baker vs. Havens*, 19 Johns. 234, and our own cases of *Collins vs. Transportation Company*, 10 Watts, 386, and *Layng vs. Stewart*, 1 W. & S. 222, there was no charter party, and the general doctrine was applied that the consignor or owner is liable for freight, notwithstanding the failure of the carrier to enforce his lien under the customary clause of the bill of lading. But this is the full extent of the cases. They do not decide the effect of a clause inserted by the owner of the vessel, which forbids the consignee to pay freight to the master, and directs it to be paid to himself. They do not, therefore, rule the case in hand.

The learned judge refused to charge that there was nothing shown to discharge the defendant, who was the owner and shipper of the cargo, from liability for freight, but instructed them, "if you find from the evidence, that at the special direction of the plaintiff, the provision in the bill of lading that the freight should be payable to him by the consignee or his assigns, was inserted—that notwithstanding this provision, he made no effort to have the freight paid to him—that he did not go on to New York to receive payment, nor appoint an agent to receive it for him, nor give authority in writing or otherwise, to receive the freight for him—that if Bagley & Brother, who bought the coal, were able to pay the freight in cash contemporaneously with the delivery of the coal to them, and would have paid it if the plaintiff had been there to receive it, or had appointed an agent to do so; and that if Bagley & Brother failed and became unable to pay, and in consequence thereof the freight has been lost, your verdict may be for the defendant."

Now, we think the question was well submitted to the jury on this summary of the facts. Through the failure of Bagley & Brother, who were the "assigns" of Duncan, the consignee, the freight is lost. Which of two innocent parties shall bear the loss—the owner of the coal, who was liable at law for freight, notwithstanding the customary clause in the bill of lading; or the owner of the vessel, who employed a master he would not trust, and then neglected to be at hand at the proper time to receive the freight himself? Is it not apparent that this neglect of the plaintiff was the cause of the loss? The rule is, that where a loss must fall upon one of two innocent parties, he shall bear it whose conduct caused it. We give the plaintiff all he can claim, perhaps more than should be conceded, if we treat him as an innocent party. He allowed his boat to be freighted for the New York market—he knew the coal was sent there to be delivered to a purchaser—the bill of lading appointed the consignee or his assignee to pay the freight—the assignee stood ready to pay it and would have paid it to the master but for the plaintiff's written order to pay it only to himself—the lien was lost and the freight unpaid simply because the plaintiff was not there by himself or agent to receive it. In all

this, if there was fault at all, it was his own fault. But if we say there was no fault on his part, as certainly there was none on Snyder's, and that they stand equally innocent, it was treating the plaintiff with the utmost fairness to submit these circumstances to the jury, and leaving them to decide which party should bear the loss. This is what the Court did. The plaintiff has no reason to complain of it.

That a party who insists on such a stipulation in a bill of lading should be at hand, or should appoint some one to receive the freight at the proper time and place for its payment, is not, we think, an unreasonable rule of law. It does not clash in the least with the authorities cited, and it is recommended by that sound rule of diligence in business which is good for every body. The Court gave this rule to the jury in connection with evidence which made its application necessary and proper.

The judgment is affirmed.

In the Court of Common Pleas—General Term.

GEORGE W. WILLIAMS vs. ALEXANDER H. HOLLAND, TREASURER OF THE
AMERICAN EXPRESS COMPANY.

Where a common carrier of merchandize received from a consignor a box, and received therefor a bill of lading in which the name of the consignee alone appeared, and the box, upon tender to the consignee, was refused, and was subsequently stored by the carrier with a regular warehouseman, from whom it was stolen: *Held*, that this did not constitute negligence on the part of the carrier, and that he was not liable for the loss.

H. A. Griswold, for Appellant.

H. C. Van Vorst, for Respondent.

The opinion of the court was delivered by

DALY, F. J.—The defendants, who were common carriers, carried a box to the place of its destination, and tendered it to the consignee, who refused to receive it. It was then safely stored by the defendants, in the premises in which they were accustomed to store merchandise, in the care of good and responsible parties; and while thus upon storage, the premises were broken into by robbers, and the box and its contents feloniously taken.